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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.293 OF 2007

Ranjit Ramchand Gaja & others Appellants
versus
Purshothambhai Goswami and ors. Respondents

Mr.Pravin Samdani, Sr.Counsel i/by M/s.Jhangiani Narula & Associates for appellants.

Mr.M.S.Memon for respondents.

CORAM : A.S.OKA, J.

DATE : 17th April 2007

JUDGMENT :-

1. Admit. Advocate for the respondents waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The appellants are the original defendants who have taken an exception to the judgement and order dated 24th March 2007 passed by the learned Judge of the City Civil Court, Mumbai by which the learned Trial Judge directed the parties to lead evidence for disposal of the Notice of Motion taken out by the respondents for grant of interim relief. The learned Judge directed that

the Notice of Motion will be decided after recording of evidence. The learned Trial Judge continued the ad-interim relief granted earlier.

3. The Notice of Motion taken out by the plaintiffs was for grant of mandatory injunction as well as a prohibitory injunction. A prayer was also made for appointment of a Court Receiver.

4. The learned senior counsel appearing for the appellants submitted that there was no occasion for the Trial Court to direct the parties to lead evidence for deciding a Notice of Motion for interim relief. He submitted that the Trial Court ought to have decided the Notice of Motion on the basis of available material on record and could not have postponed the disposal of the Notice of Motion till the parties led the evidence. He has also made submissions on the merits of the order passed by the Trial Court. The learned counsel appearing for the respondents supported the impugned order. He submitted that in the event this Court is inclined to set aside the impugned order, the Trial Court be directed to decide the Notice of Motion expeditiously and ad-interim order which is granted earlier be

allowed to operate till the disposal of the Notice of Motion.

5. I have considered the submissions. The operative part of the impugned order reads thus:-

> "On the next date the parties are to be heard on Point No.1 and similarly on the adjourned date parties are directed to lead their evidence for disposal of the motion. They are also at liberty to produce additional documentary evidence, if any. Till the Motion is decided after recording of evidence, earlier ad-interim order granted to continue. Next adjourned date in the Motion is 23.04.2007 in C.R.No.4. R & P of this motion and the suit be sent to CR No.4."

6. Point no.1 framed by the learned Trial Judge is as regards proper valuation of the suit. The other three points framed by the learned Trial Judge for consideration are relating to grant of temporary injunction. The learned Trial Judge was dealing with the prayer for temporary injunction made under Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908. The said prayers are required to be decided on the basis of the affidavits filed by the parties and the other material placed on record. Same is the case with prayer for appointment of Court Receiver under Order XL, Rule 1 of the Code of

1908. The prayer for grant of temporary injunction has to be considered on the basis of the affidavits and the material available on record and in normal course the Trial Court cannot permit the parties to lead evidence. The mandate of law as incorporated in Rule 3A of Order XXXIX of the said Code of 1908 is that where an ex-parte injunction has been granted, the Court shall make an endeavour to finally decide the application for temporary injunction within 30 days from the date on which the injunction was granted. If the Court is unable to do so, reasons are required to be recorded. Thus, the application for interim reliefs such as temporary injunction and/or appointment of Court Receiver is to be disposed of expeditiously. If the parties are permitted to lead evidence, such application can never be disposed of expeditiously. The learned Trial Judge has directed the parties to lead evidence on the issues of balance of convenience and irreparable loss. Considering the facts of the case, such approach was uncalled for. Therefore, that part of the impugned order by which the parties are directed to lead evidence will have to be set aside. Insofar as point no.1 regarding proper valuation of the suit is concerned, the Trial

Court will have to decide the said point while finally deciding the Notice of Motion.

7. In this view of the matter, it is not necessary to go into the merits of the case as the Notice of Motion has not been decided on merits. The Notice of Motion deserves to be heard and decided expeditiously. Till the disposal of the Notice of Motion, ad-interim relief granted by the Trial Court on 12th April 2006 will have to be continued.

8. Hence, I pass following order :-

(a) The direction issued by the learned Trial Judge to the parties to lead evidence for disposal of the Notice of Motion No.1585 of 2006 is quashed and set aside. It is clarified that the parties cannot be permitted to lead oral evidence for the disposal of Notice of Motion;

(b) The learned Trial Judge will decide the Notice of Motion No.1585 of 2006 as expeditiously as possible and preferably before end of June 2007. It is clarified that learned Trial Judge will decide the Notice of Motion without being influenced by the observations made in the

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impugned order;

(c) Ad-interim relief granted by the learned Trial Judge on 12th April 2006 will continue to operate till the final disposal of the Notice of Motion;

(d) Point no.1 framed by the learned Trial Judge as regards valuation of the suit will be considered and decided along with Notice of Motion;

(e) All contentions of the parties on merits in the pending Notice of Motion are kept open;

(f) The appeal is partly allowed in the above terms with no orders as to costs;

(g) Civil Application No.436 of 2007 will not survive in view of disposal of appeal and it stands rejected as such.

(A.S.OKA, J.)